

**COLORADO DEPARTMENT OF PERSONNEL & ADMINISTRATION
OFFICE OF ADMINISTRATIVE COURTS**

**PROCEDURAL RULES FOR
WORKERS' COMPENSATION HEARINGS**

*The Procedural Rules for Workers' Compensation Hearings were adopted on February 9, 2015
and are effective March 30, 2015.*

Preamble

The Office of Administrative Courts Procedural Rules for Workers' Compensation were initially adopted in their entirety by the Department of Personnel & Administration on October 26, 2005.

This version reflects a repeal of the former rules and reissuance by the Director to amend the Office of Administrative Courts Procedural Rules for Workers' Compensation Hearings.

OAC Rule 1. Definitions.

As used in these Procedural Rules for Workers' Compensation Hearings:

A. "OAC" means the Office of Administrative Courts, created in the Colorado Department of Personnel and Administration by Section 24-30-1001(1), C.R.S.

B. "Judge" is defined as a judge in the Office of Administrative Courts and a pre-hearing judge in the Division of Workers' Compensation.

C. "OACRP" means Office of Administrative Courts' Rules of Procedure.

D. All days shall be considered calendar days unless specifically noted in the rule otherwise.

E. "Mailing" as used in these rules shall include first class mail, or e-mail.

F. "Address" as used in these rules shall include both the mailing and e-mail address for a party.

OAC Rule 2. Applicability.

A. These rules apply to procedural orders and hearings pursuant to the Workers' Compensation Act of Colorado, Articles 40 to 47 of Title 8, C.R.S., from the date an Application for Hearing is filed until the time to file a Petition to Review has run, or, if a Petition to Review is filed, until the file is transmitted to the Industrial Claim Appeals Office, or until the time to issue a corrected order has run.

B. The Colorado Rules of Civil Procedure apply to Workers' Compensation hearings unless they are inconsistent with these rules and the provisions of the Workers' Compensation Act.

OAC Rule 3. *Ex-Parte* Communications.

With the exception of scheduling or other purely administrative matters, and with the exception of settlement conference or mediation processes, a party or counsel for a party shall not initiate any communication with a judge pertaining to a matter before the OAC unless prior consent of all other parties or their counsel has been obtained. Copies of all pleadings or correspondence filed with the OAC or directed to a judge by any party shall be served pursuant to Rule 6, OACRP

OAC Rule 4. Filing of Documents.

A. The originals of all pleadings and other papers filed in a proceeding before the OAC shall be filed with the OAC. Additional copies shall not be filed and will be discarded and not made part of the OAC file.

B. The date of filing shall be the date served on the OAC as indicated on the certificate of service, or, if no certificate of service is included, the date received by the OAC.

C. All pleadings and documents filed with the OAC shall contain the Workers' Compensation claim number and suffix, if applicable.

D. All documents shall be filed at the OAC's office where the hearing is set to occur or by e-filing, unless venue has been changed by an order of a judge or designee clerk for good cause shown.

E. Facsimile filing is highly discouraged, however, in the event that a party or judge deem it necessary, no filings over 10 pages will be accepted. Facsimile filings must be accompanied by a cover sheet that states the title of the document, case number, number of pages, identity and telephone numbers of the transmitter, and the identity and facsimile numbers of all other parties or persons to whom the facsimile copy was sent.

OAC Rule 5. E-Filing.

All filings made with the OAC by e-filing are considered to be filed in the proper venue, if such venue is marked on the appropriate forms.

OAC Rule 6. Service of Documents.

A. Service of pleadings or other papers on a party may be made by hand delivery, by mail to the address given in the pleadings, by facsimile transmission to a facsimile number given in the pleadings, by e-mail to an e-mail

address given in the pleadings, or to the party's last known address as provided to the OAC. When an attorney represents a party, service shall be made on the attorney.

B. Attorneys shall inform the OAC and all other parties of their current addresses, telephone numbers, facsimile numbers, and e-mail addresses, and of any changes to said information during the course of the proceedings within 5 business days.

C. Parties not represented by attorneys shall inform the OAC and all other parties of their current address, telephone numbers, facsimile numbers and e-mail [addresses](#), and of any changes to said information during the course of the proceedings within 10 business days.

D. The parties shall confer with one another regarding the status of pleadings filed with the OAC prior to contacting the OAC. The parties shall also confer with one another regarding requests for copies of pleadings filed with the OAC. The OAC charges a copying fee for copies of all pleadings provided to the parties.

OAC Rule 7. Hearing Request.

Any party may request a hearing on issues ripe for adjudication by filing an Application for Hearing, Application for Expedited Hearing, or an Application for Hearing - Disfigurement Only.

OAC Rule 8. Application for Hearing.

A. The Application for Hearing shall be on a form provided by the OAC, or on a substantially similar form.

B. The hearing shall be set in the hearing venue closest to the claimant's residence, unless a different venue is agreed upon by the parties and approved by a judge, or as otherwise ordered by a judge.

C. If the hearing is to be set in Denver or Greeley, the Application for Hearing shall be filed at the OAC's Denver office. If the hearing is to be set in Colorado Springs or Pueblo, the Application for Hearing shall be filed at the OAC's Colorado Springs office. If the hearing is to be set in Grand Junction, Glenwood Springs, or Durango, the Application for Hearing shall be filed at the OAC's Grand Junction office.

D. Copies of the Application for Hearing must be mailed or delivered to the opposing party or parties, as provided by Rule 6, OACRP.

E. A clerk of the OAC may reject any Application for Hearing that is not complete. The rejection shall be without prejudice.

F. Telephonic settings shall be on a Tuesday, Wednesday, or Thursday, between the hours of 8:00 a.m. and 12:00 p.m., or 1:00 p.m. and 3:00

p.m. Hearings shall be set at least 15 days and no more than 30 days from the date of the filing of the Application for Hearing.

G. A Response to Application for Hearing or a Notice of Entry of Appearance shall be filed no later than 15 days from the date of the filing of the Application for Hearing. If a Notice of Entry of Appearance is filed, the Response to Application for Hearing shall be filed no more than 30 days from the date the Application for Hearing was filed.

H. A party who is not represented by an attorney may request that the OAC set the matter for hearing. In that instance, Paragraph I below shall not apply.

I. The applicant shall obtain available hearing dates from the OAC that are within 80 to 120 days from the date the Application for Hearing was filed and, if a Response to Application for Hearing or a Notice of Entry of Appearance was filed, contact the opposing party and agree on the date and time for the hearing. The applicant shall send the OAC a written confirmation of the date and time selected. If the parties are unable to agree on a date and time, the applicant shall notify the OAC in writing that there is no agreement, and the OAC shall set the matter for hearing at a date and time of its choosing.

J. Upon motion and good cause shown, a judge may grant the parties a non-trailing setting for a hearing to be held in Colorado Springs, Denver, or Grand Junction.

K. If the OAC does not receive written confirmation of the hearing from a party within 30 days after the date of the filing of the Application for Hearing, the Application shall be stricken without prejudice. Any party may, as permitted by law, file a new Application for Hearing regarding issues that are ripe for adjudication.

OAC Rule 9. Application for Expedited Hearing.

A. The Application for Expedited Hearing shall be on a form provided by the OAC, or on a substantially similar form.

B. A claimant may file an Application for Expedited Hearing if the respondent filed a Notice of Contest and less than 45 days have passed since the Notice of Contest was filed. The issues in an expedited hearing shall be limited to compensability, medical benefits, and affirmative defenses to those issues raised by the respondent, and other issues as agreed upon by the parties.

C. A claimant may file an Application for Expedited Hearing if there is an urgent need for prior authorization of health care services recommended in writing by an authorized treating provider, and prior authorization has been denied. A copy of a medical record documenting the urgent need for prior authorization of health care services shall be attached to the Application for Expedited Hearing. The issue will be limited to liability for those health care services, and other issues as agreed upon by the parties.

D. A respondent may file an Application for Expedited Hearing if it has filed a Petition to Suspend, Modify, or Terminate Compensation, and the claimant has filed an objection. The issue at the hearing shall be limited to a determination of the Petition to Suspend, Modify, or Terminate Compensation and other issues as agreed upon by the parties.

E. Copies of the Application for Expedited Hearing must be mailed or delivered to the opposing party or parties, as provided by Rule 6, OACRP.

F. If the applicant qualifies for an expedited hearing, the OAC shall set the matter for hearing to occur consistent with the provisions of the Workers' Compensation Act. The OAC shall determine the location, date, and time of the expedited hearing, and shall send notice of the hearing to the parties, as provided by Rule 11, OACRP.

G. The opposing party may file a Response to Application for Expedited Hearing within 10 days of the mailing or delivery of the Application for Expedited Hearing.

H. A clerk of the OAC may reject any Application for Expedited Hearing that is not complete. The rejection shall be without prejudice.

I. If the applicant does not qualify for an expedited hearing, the Application for Expedited Hearing shall be rejected. The applicant may then file an Application for Hearing pursuant to Rule 8, OACRP.

OAC Rule 10. Disfigurement Award.

A claimant may request a determination of additional compensation for disfigurement to areas of the claimant's body normally exposed to public view by filing an Application for Hearing – Disfigurement Only with the OAC office closest to the claimant's residence, unless a different venue is agreed upon by the parties and approved by a judge, or as otherwise ordered by a judge.. Unless the parties agree otherwise, the date of the Application for Hearing must be at least six months from the date of injury except when the claimant has had surgery, in which case the Application for Hearing must be at least six months from the date of surgery. If a final admission of liability has been filed pursuant to Section 8-43-203(2)(b)(II)(a), C.R.S., a claimant may request a hearing on disfigurement regardless of the date of injury or surgery.

A. Application for Hearing – Disfigurement Only.

1. The Application for Hearing – Disfigurement Only shall be on a form provided by the OAC, or on a substantially similar form.
2. Copies of the Application for Hearing – Disfigurement Only must be mailed or delivered to the opposing party or parties, as provided by Rule 6, OACRP.

3. An opposing party may file a Response to Application for Hearing – Disfigurement Only within 10 days of the mailing or delivery of the Application for Hearing – Disfigurement Only.
 4. The OAC will set the matter for hearing at a location, date, and time of its choosing, and shall send notice of the hearing to the parties, as provided by Rule 11, OACRP.
 5. A clerk of the OAC may reject any Application for Hearing – Disfigurement Only that is not complete. The rejection of an Application for Hearing – Disfigurement Only shall be without prejudice.
- B. Disfigurement Award – Photographs.

Requests for a Disfigurement Award by photograph shall be filed with the Division of Workers' Compensation. The Claimant shall not simultaneously file a Request for a Disfigurement Award by photograph and an Application for Hearing – Disfigurement Only. Should the claimant be dissatisfied with an award based on photographs, the claimant is permitted to file an Application for Hearing – Disfigurement Only with the OAC.

C. Disfigurement Orders.

Unless otherwise provided in the disfigurement award order, the employer or insurer is entitled to a credit for any amount previously paid for disfigurement. If the amount of the credit exceeds the disfigurement award, the employer or insurer may offset the amount of the credit against any future temporary or permanent disability benefits.

OAC Rule 11. Notice of Hearing.

The OAC shall send a Notice of Hearing to the addresses on the application consistent with Rule 6, OACRP. If a Notice of Entry of Appearance or a response to the application is filed, the OAC shall send a Notice of Hearing to the addresses on the notice or response. If no Notice of Entry of Appearance or no response is filed, the OAC shall send a Notice of Hearing to the respondent's addresses given on the application.

OAC Rule 12. Issues for Hearing.

A. Issues for hearing shall be listed in the Application for Hearing, the Response to the Application for Hearing, or may be added before the hearing date is confirmed by written notice to the OAC and the opposing party. After the hearing date is confirmed, issues may only be added by written agreement of the parties or order of a judge or designee clerk for good cause shown.

B. At the commencement of hearing, the parties shall confirm the issues to be determined, including affirmative defenses.

OAC Rule 13. Witnesses.

Only endorsed witnesses may testify in a party's case-in-chief. Endorsed witnesses are witnesses listed on either the application or the response to the application, witnesses added by written notice before the hearing date is confirmed, witnesses added by written agreement of the parties, or witnesses added by order of a judge or designee clerk.

OAC Rule 14. Extension of Time to Commence Hearing.

Except for an extension of time that must be granted pursuant to Section 8-43-209(1), C.R.S., a judge or designee clerk may grant an extension of time to commence a hearing upon agreement of the parties, or upon motion and good cause shown. A judge may, on the judge's own motion, extend the time to commence a hearing if time is not available on the docket.

OAC Rule 15. Hearing Vacated.

After a response to an application is filed, the application may not be withdrawn and the hearing may not be vacated except upon the agreement of all parties or upon the order of a judge. If the parties agree to the withdrawal of the application the applicant must promptly notify the OAC of the agreement to vacate the hearing. Notification shall be made by letter, facsimile or e-filing. Hearings may be cancelled by telephone, but must be followed up with written confirmation and served on all parties pursuant to Rule 6, OACRP.

OAC Rule 16. Motions.

A. Motions and responses or objections to motions must be filed in the same office of the OAC where the Application for Hearing was filed or by e-filing with the OAC. Motions and responses or objections to motions filed with the OAC may be faxed, e-mailed, hand-delivered or mailed to the opposing parties, as provided in Rule 6, OACRP. Motions and responses or objections to motions filed with the OAC shall be served upon opposing parties on the same day.

B. Every motion must include a certification by the party or counsel filing the motion that he or she has conferred, or made a good faith effort to confer, with opposing counsel and unrepresented parties, and must also include a statement regarding whether the motion is contested, uncontested, or stipulated. If no conference has occurred, an explanation must be included in the motion.

C. The motion shall conspicuously state in the caption if the motion is unopposed or stipulated.

D. If a motion is stipulated, or if the opposing parties have no objection, the motion may be granted forthwith by the OAC's designee clerk, or may be granted or denied by a judge.

E. The responding party shall file a response or objection to a motion within 10 days from the date the motion was filed at the OAC. See Rule 4.B., OACRP. A response or objection filed by facsimile or e-filing must be simultaneously served on the opposing parties.. If filed by mail or hand-delivery, the certificate of service must indicate that service was executed on the date of filing and indicate the method of service.

F. The OAC may refer any matter within the jurisdiction of a pre-hearing judge to a pre-hearing judge. If the parties agree to resolve a pending motion by proceeding to a pre-hearing conference before a pre-hearing judge, the parties shall promptly notify the OAC of the pending pre-hearing conference.

G. . The parties shall submit a proposed order with each motion and response. The proposed order shall include a certificate of service containing the e-mail addresses for all parties, or if the parties do not have e-mail addresses, the certificate of service shall contain the facsimile numbers for all parties. The resulting order shall be sent either by e-mail or facsimile to all parties consistent with Rule 6, OACRP. If e-mail or facsimile information is not available for all parties, the order shall be sent to the moving or prevailing party who is responsible for distribution of true and correct copies of the order to all remaining parties promptly, and in any event no later than five calendar days after the date the order is received.

OAC Rule 17. Summary Judgment.

Any party may file a motion for summary judgment seeking resolution of any endorsed issue for hearing. The motion for summary judgment shall be captioned as such. The motion for summary judgment must be supported by an affidavit or affidavits, transcripts of testimony, or by medical reports or employer records that show that there is no disputed issue of material fact and that the party is entitled to judgment as a matter of law. The motion must refer to this Rule 17, OACRP., and to the section of the Workers' Compensation Act upon which the party seeks relief. The motion for summary judgment must be accompanied by a proposed order that includes findings of fact, conclusions of law, and an order. An objection to a motion for summary judgment may be filed within 20 days of the date of filing of the motion. If there is a disputed issue of material fact, the objection must specifically identify the disputed issue of material fact.

OAC Rule 18. Subpoenas.

A subpoena to compel the attendance of witnesses or parties and the production of books, papers, or records at a scheduled deposition or hearing may be issued on behalf of the OAC by a judge or by a licensed attorney for a party.

OAC Rule 19. Hearings Open to the Public.

Hearings are open to the public. However, when necessary and reasonable, a judge may clear all persons from the hearing room except counsel and parties..

OAC Rule 20. Case Information Sheet (CIS).

A. Unless otherwise ordered by a judge, and except for disfigurement only hearings under Rule 10, OACRP., the parties jointly, or each party individually, shall file and serve pursuant to Rule 6, OACRP., a Case Information Sheet (CIS) on a form provided by the OAC, or on a substantially similar form. Case Information Sheets shall be filed and served no more than twenty days and no less than five days prior to the date set for the commencement of the hearing, or such other date established by a judge.

B. The purpose of the CIS is to permit the judge to determine the priority of the cases set, and to manage the docket more efficiently. The CIS is not discovery.

C. The CIS shall advise the judge as to whether the parties have conferred and made a good faith effort to resolve the issues set for hearing, the status of any discovery, the stipulations to be offered, the issues remaining for hearing, the names of the lay and expert witnesses to testify at the hearing, whether each witness shall testify in person or by telephone, whether the witness will travel more than 100 miles for the hearing, the area of expertise of any expert witness, and whether an extension of time to commence the hearing has previously been granted.

D. Should a party fail to file a CIS, the judge may: (1) strike the application for hearing without prejudice and vacate the hearing; (2) issue an order to show cause why the issues or defenses should not be dismissed with prejudice; (3) continue the hearing to a future date; (4) continue the hearing and require the parties to attend a pre-hearing conference prior to proceeding to a hearing on the merits; or (5) proceed to hearing on the merits.

OAC Rule 21. Interpreters.

A. All proceedings shall be conducted in English. A party who does not adequately speak or understand English, or any party who calls a witness who does not adequately speak or understand English, must arrange for a

foreign language interpreter to be present at any hearing. The OAC shall not provide foreign language interpreters.

B. Immediately prior to the commencement of the hearing, any interpreter must review the “Code of Conduct for Interpreters in Administrative Hearings” and agree in writing to abide by its provisions.

OAC Rule 22. Testimony by Telephone, Videoconference or Other Electronic Means.

A. An endorsed witness may testify by telephone, videoconference or other electronic means if the party calling the witness has so advised in the Case Information Sheet or has given all parties written notice at least five working days prior to the hearing. The party calling a witness by telephone, videoconference or other electronic means must do so at its expense, and must make advance arrangements for a speakerphone in the hearing room, or other arrangements as necessary for testimony by videoconference or other electronic means. Advance arrangements for a speakerphone need not be made if the hearing is set to occur in Denver, Colorado Springs, Pueblo, or Grand Junction.

B. An opposing party, at its expense, may compel the attendance of a witness who would otherwise testify by telephone, videoconference or other electronic means by serving a subpoena upon the witness.

OAC Rule 23. Non-Appearing Party.

If a party fails to appear at a hearing after the OAC has sent notice of the hearing to that party, prior to entering any orders against the non-appearing party as a result of that hearing, the judge will consider:

A. The addresses to which the notice of hearing was sent are the most recent addresses provided by the non-appearing party to either the OAC or the Division of Workers’ Compensation; or

B. If no address for the non-appearing party is on file with the OAC or the Division of Workers’ Compensation, the judge finds on the basis of other evidence that:

1. Notice of the hearing was sent to an address at which it is likely to be received by the non-appearing party or the non-appearing party’s authorized representative; or

2. The non-appearing party in fact received notice of the hearing.

C. A copy of a record or other written statement from the OAC or the Division of Workers’ Compensation containing the most recent address provided by the non-appearing party to either of those agencies shall be sufficient to create a rebuttable presumption that the non-appearing party received notice of the hearing.

OAC Rule 24. Closing Statement.

A. At the conclusion of a hearing, a party may make a closing statement or, at the discretion of the judge, submit a written closing statement. A written closing statement shall be submitted by mail or e-mail, in Microsoft Word format, to the OAC. The deadline for submission of written closing statements shall be at the discretion of the judge.

B. Written closing statements shall be limited to the issues endorsed before the judge on the record at the hearing. Written closing statements shall not include any attached documents that were not admitted into evidence by the judge at hearing unless otherwise stipulated by the parties or permitted by the judge for good cause shown.

C. Any written closing statement shall not exceed twenty pages, double spaced and in a type face no smaller than 12 points. A judge may allow a written closing statement to exceed twenty pages for good cause shown. Any written closing statement that exceeds the limits set forth in this Rule may be rejected by the judge.

OAC Rule 25. Order.

A. The judge shall issue a written order within the time frames set forth by Section 8-43-215(1), C.R.S. A copy of the order shall be mailed to each attorney who appeared at the hearing and to unrepresented parties. The OAC is authorized to serve any final order of a judge issued under the Workers' Compensation Act of Colorado on counsel or unrepresented parties by e-mail, as permitted by Section 8-43-215(1), C.R.S.. The parties are required to provide the OAC with an updated e-mail address for the service of the order.

B. If the judge issues a summary order pursuant to Section 8-43-215(1), C.R.S., and a request for a full order is filed by any party, all parties shall have five working days from the date the request for a full order was filed to submit their proposed findings of fact, conclusions of law, and order. The proposed orders shall be submitted by e-mail, in Microsoft Word format, to the applicable OAC e-mail address.

OAC Rule 26. Petition to Review.

A. If an order is subject to appeal, a party may file a Petition to Review or a Petition to Review and Transcript Request with the OAC's office in Denver. A Petition to Review filed by e-filing shall be deemed filed with the OAC's office in Denver.

B. Forms for a Petition to Review and a Petition to Review and Transcript Request are available from the OAC on its website.

C. A request for an extension of time to file a Petition to Review or a Petition to Review and Transcript Request may only be granted if the request is filed within the time limit for filing a Petition to Review.

D. When a Petition to Review and Transcript Request is filed, the following procedures shall apply:

1. Any party who orders a transcript in connection with filing a Petition to Review in a Workers' Compensation case is responsible for making arrangements to have the hearing transcribed from the recording, and for filing the written transcript with the OAC.
2. A party filing a Petition to Review in a Workers' Compensation case who wishes to order a transcript must include a statement that a transcript is requested in the caption of the Petition to Review.
3. The transcript shall be prepared by a court reporter or transcriptionist who does not have an interest in the case and whom the party requesting the transcript selects. Along with the request for a transcript, the Petition to Review shall identify, by name and mailing address, the person to whom the recording should be sent.
4. The OAC shall mail to all parties a notification of the date the recording was sent to the designated court reporter or transcriptionist. The twenty-five working day time limit for filing the transcript with OAC shall begin from the date contained in that notice, pursuant to Section 8-43-213(2), C.R.S.
5. If a transcript is not filed with the OAC within the twenty-five working day time limit, and no motion has been filed by a party and an order entered to extend the filing deadline, the OAC shall issue an Order Striking Transcript Request and Notice and Briefing Schedule. The issuance of a briefing schedule shall constitute notice to the parties that the order for the transcript has been withdrawn. The briefing schedule shall control the processing of the Petition to Review unless, within seven days of the issuance of the briefing schedule, a party makes a request, showing good cause, that the party be allowed to file a late transcript with the OAC. If such a request is made, the judge shall rule on the request and, at the same time, issue appropriate orders regarding the briefing schedule.
6. The procedure set forth in this rule also applies to the order of a transcript by a party opposing a Petition to Review.

E. Briefs in support or in opposition to Petitions to Review may not exceed twenty pages, double-spaced and in a type face no smaller than 12 points, exclusive of pages containing the table of contents, tables of citations, and any addenda containing statutes, rules, decisions, regulations and similar material. A judge may allow a brief to exceed twenty pages for good cause shown.

F. The judge may dismiss a Petition to Review or a Petition to Review and Transcript Request without prior notice to the parties if it appears that the petition is not timely filed. A party may file a motion requesting reconsideration of such an order within twenty days of the date of mailing of the order. A denial of a motion for reconsideration is subject to a Petition to Review.

OAC Rule 27. Requests for Transcripts of Hearings Not in Connection with a Petition to Review.

A. A party or other interested person may request a copy of the audio recording or a written transcript of a hearing or part of a hearing. A party or other interested person is limited to the claimant, the respondent, the employer, the adjusting agent, or an attorney or designated representative of any of the parties. A witness may request an audio copy or a written transcript only of the witness' testimony.

B. Any request for an audio recording shall be made pursuant to OAC Policy 15.

OAC Rule 28. Retention of Audio Recordings of Hearings.

A. The OAC shall retain audio recordings of hearings for at least three years following the date the recording was made. Audio recordings may be erased or destroyed at the conclusion of this three-year period.

B. This rule does not apply to audio recordings of Workers' Compensation prehearing conferences, disfigurement hearings or *pro se* settlement hearings. Those audio recordings may be destroyed or erased after 100 days.